IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Appeal No. 199 of 2000

Reserved on: 27-6-2007.

Date of Decision: 3 .07.2007.

State of H P. Appellant.

Versus

Hari Dass and others. Respondents.

Coram

Hon'ble Mr. Justice Surinder Singh, J.

Whether approved for reporting[1]? No.

For the appellant : Sh.V K Verma, Additional Advocate General.

For respondents. : Shri Jagan Nath Sharma, Advocate vice Shri Anand Sharma, Advocate.

Surinder Singh, J . (oral)

The respondents were charge-sheeted for the offences punishable under Sections 323, 325, 341, 451, 504 and 506 read with Section 147 of the Indian Penal Code. They faced trial before the Judicial Magistrate Ist Class in case No. 265/2 of 1996. Vide its detailed judgment dated 20.9.1999, they were acquitted.

Against the impugned judgment of acquittal, the State has filed the instant appeal on the ground that the learned trial Court did not appreciate the evidence of the injured as well as independent witnesses in the right perspective, thus, came to the wrong conclusion.

Leave to appeal was accorded by this Court on 28.4.2000. Now the matter has been finally heard.

Shri V.K. Verma, learned Additional Advocate General has forcefully argued that the learned trial Court did not appreciate the evidence led by the

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Whether reporters of the Local papers are allowed to see the judgment? Yes.

prosecution in the right perspective. In order to ventilate his point, he went through every bit of the evidence of the prosecution and urged that the impugned judgment requires to be reversed and the respondents punished accordingly.

Shri Jagan Nath Advocate appearing for the respondents while supporting the impugned judgment of acquittal, urged that the view taken by the trial Court is made out from the evidence aforesaid, therefore, the acquittal is sustainable.

I have given my thoughtful considerations to the rival contentions of the parties and have legally scanned the evidence of the prosecution.

Admittedly, the respondents have also filed a case against the complainant party regarding the same incident which is sub-judice as made out from the record and from the statement of Investigating Officer (PW11), Dhani Ram (PW5) and Sunita Devi (PW6). The accused had also sustained the injuries. Perusal of the report under Section 173 of the Code of Criminal Procedure gives no reference to this effect. Therefore the present case has to be viewed and approached with reference to the above facts.

Precisely, the case of the prosecution is that there was some bickering going on inter-se the parties for the last about three years and some beating incidents also ensued but later on, when the police visited the spot, the parties effected the compromise.

It is alleged that on 27.9.1996, at about 9.40 P.M., the complainant and his brothers, Dhani Ram and Sita Ram, after taking the meals were going to sleep at a distance where cow-shed was located. When they reached near the house of Paras Ram, Nand Lal respondent saw them in the torch light and stopped them, thereafter, he started beating them. Thereafter he brought a Danda. The other respondents accompanied him and they were armed with Dandas and sharp edged weapons, entered the house of the complainant and started giving beatings. In that process, wife of Hari Dass lost her silver chain. When the hue and cry was raised, about 10-15 persons of village gathered there and relieved them from the

clutches of the respondents. On this basis of this information, an FIR was lodged. Police got the injured Sanjiv Kumar, Damodri Devi and Dhani Ram medically examined. According to the Medico Legal Certificate, Exhibit PW12/B pertaining to Damodari Devi, she had sustained simple injuries over her head but as per the M.L.C. of Sanjiv Kumar (PW12/A), there was evidence of fracture of meta corpal bone of the left hand. Thus, this injury was grievous. The Police after visiting the spot, prepared the site plan Exhibit PW11/C and also took the pieces of broken bulb into possession vide memo Exhibit PW4/B. The statements of the witnesses under Section 161 of the Code of Criminal Procedure were recorded and the case was presented in the Court for trial . Finding a prima facie case against the respondents, they were charge-sheeted under the aforesaid sections, to which they pleaded not guilty and claimed trial.

To prove its case, the prosecution examined as many as twelve witnesses. After appreciating the evidence on record, learned trial Court acquired the respondents against which the instant appeal has been filed.

On re-appraisal of the evidence of the prosecution, I have found the material contradictions in their statements. As a matter of fact, it appears to be a case of free fight between the parties who were nourshing the old grudge between them. It is not clear as to who was the aggressor. According to Sanjiv Kumar, at about 9.30 P.M., respondent Nand Lal had restrained Dhani Ram (PW5) and Sita Ram (not examined) and there was a scuffle between them. Paras Ram had intervened and separated both the parties. Paras Ram was not examined to substantiate this version nor Sanjiv Kumar was present at the relevant time. It is further stated by him that again at about 1.00 P.M, Nand Lal, Hari Dass, Jamuna Devi, Brij Lal, Sita Ram alias Pinka, Soma and Prem Devi came to the court yard of their house, duly equipped with Dandas in their hands and started beating them. According to him, when he was sitting in his Rasoi (kitchen) washing his feet, Nand Lal gave him a Danda blow on his left hand which caused fracture but in the cross-examination when he was confronted with his statement recorded

under Section 161 of the Code of Criminal Procedure from portion mark 'A' to 'A' wherein it was found mentioned that it was Hari Dass who had given him the Danda blow which fact was denied by him. This is a major contradiction in his statement as the injured himself has deviated from his earlier version given to the Police. PW2 Manbharu also alleged the beatings given by the respondents but she was not medically examined but in the cross-examination, she had stated that at the relevant time, it was pitch dark and further admitted that the respondents after taking the meals in the kitchen were going to their own house to sleep but there were some hot exchanges of words in the compound with respect to the earlier dispute. Damodari Devi (PW3) has stated that Hari Dass had given the danda blow on her hand. All the villagers about 30/40 persons had gathered there on hearing the cries. Further, she has stated that Mast Ram and Dhani Ram were not present in the compound and the members of her family had come out from the houses which fact again goes contrary to the version given by the PW1 above.

She has further admitted that both the parties were imputing allegations on each other that they were the aggressors when there was scuffle near the house of Paras Ram. Sati Devi (PW4) who was said to have intervened, has not supported the version of the prosecution. According to her, she stopped both the parties to pick up the quarrel and thereafter there was a fight between both the parties at about 10.00 P.M. At that time, many villagers were present. In cross-examination, she has stated that it was pitch dark at that time and she did not know who had beaten whom. She further stated that the parties were fighting on the village path near the kitchen of the respondents thus she had shifted the venue of the incident from the kitchen of PW1 to the above place. Further, PW Mast Ram wrongly mentioned as PW4, has stated that Sati Devi Pw, Durga Ram and Prem Lal had come to the spot but they were not examined to lend assurance to the case of the prosecution. Dhani Ram (PW5) did not specifically impute the allegations of causing fracture to any of the respondents in particular. He further admitted that there was no fight between the parties in his presence. He was

confronted with his statement Exhibit D1 portion marked ‘A’ to ‘A’ to ‘C’ to ‘C’ given to the Police at the initial stage to which he dis-owned. He has admitted that with respect to this incident, there was also a criminal case against them which was filed by the respondents. Sunita Devi (PW6) has also admitted this fact in her cross-examination and further admitted that she did not know who had hit whom because of the darkness. Rajinder Kumar (PW7) has given another version that the respondents had entered into his house and caused injuries to them. PWs l to 6 are the members of one family. They have given contradictory version with respect to the incident. Rajinder Kumar (PW7) was also confronted with his statement Ex. D3 to which he dis-owned. Durga Ram (PW8) has stated that he had seen both the parties fighting with each other and he also did not know who had attacked whom. Dr. N.K. Sankhyan (PW9) though had given the opinion on the X-rays of PW1 but these x-rays were not taken in his presence and only films were produced for his opinion. Even, the Investigating officer Karam Chand (PW11) has not stated whether the x-ray films pertaining to PW1 were produced before the said Doctor for his opinion.

It is pertinent to note that the Investigating officer in the tail end of his cross examination has admitted the fact that the complainant party is quarrelsome who had attacked the respondents during the night near their house and a case was registered by him against them. Dr. Ajay Aggarwal has stated that that the injuries on the person of the complainant party could be caused due to fall and he further admitted that Hari Dass and Nand Lal respondents were also examined by him who had sustained the injuries.

On the critical examination of the aforesaid witnesses, I find that the injuries on the person of the respondents, aforesaid, were not explained by the prosecution. The very genesis of the occurrence was kept hidden as an ice burge.

I have gone through the judgment passed by the learned trial Court. Of course, it lacks clarity but the net result is that the respondents deserve acquittal in view of this conflicting evidence which coincides with this ultimate

conclusion. Therefore, there is no cause for interference in the acquittal recorded by the learned trial Court. Accordingly the appeal merits dismissal.

No other point is urged. In result, the appeal is dismissed for the reasons aforesaid. The respondents are discharged of their bail bonds entered upon them at any time during the proceedings of this case. The matter is accordingly disposed of.

(Surinder Singh)
Judge.

July 3, 2007.
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